

# SENATE BILL REPORT

## SHB 1492

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As of March 21, 2007

**Title:** An act relating to arbitration under certain insurance policies.

**Brief Description:** Using arbitration to resolve disputes regarding certain insurance policies.

**Sponsors:** House Committee on Insurance, Financial Services & Consumer Protection (originally sponsored by Representatives Simpson, Campbell, Kirby, VanDeWege, Williams, Chase, Wood and Santos).

**Brief History:** Passed House: 3/10/07, 67-30.

**Committee Activity:** Financial Institutions & Insurance: 3/20/07.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Staff:** Vanessa Firnhaber-Baker (786-7471)

**Background:** Personal injury protection (PIP) is an automobile insurance coverage that provides limited financial compensation for injury, death, disability, wage loss, and other expenses incurred because of an accident, regardless of fault. Automobile liability insurers must provide PIP coverage under non-business auto insurance policies unless the named insured rejects PIP coverage in writing.

An insurer must offer PIP coverage with the following mandatory minimum benefits:

- up to \$10,000 for medical and hospital expenses incurred within three days of the date of in the insured's injury;
- up to \$2,000 for funeral expenses;
- up to \$5,000 for loss of services, subject to a limitation of \$40 per day and \$200 per week; and
- \$10,000 in loss of income.

Insurers must offer increased benefits, which may include a maximum of \$35,000 for medical expenses and \$35,000 for loss of income, if specifically requested by the insured.

Arbitration is a nonjudicial method for resolving disputes in which a third party is given authority to decide the case. Parties are generally free to agree between themselves to submit an issue to arbitration. If parties agree to arbitrate a dispute, the decision of the arbitrator is binding. It is only appealable to a court under very limited grounds. Grounds for reversing an arbitrator's decision include: the award was procured by fraud, the arbitrator was corrupt or biased, and failure to provide notice of arbitration to the opposing party.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Substitute Bill:** All automobile insurance policies sold in Washington that contain PIP coverage must also contain a binding arbitration clause. The clause requires the disputes between the insured and insurer regarding coverage be resolved through nonjudicial arbitration.

Either the insurer or the insured may request arbitration. The request must be made in writing. The parties must select an arbitrator to hear the dispute within 30 days of a written request. If the parties fail to agree on an arbitrator within that 30 days, an arbitrator will be appointed by a court with jurisdiction over the dispute.

The cost of the arbitrator must be paid by the insurer. If an arbitration results in additional benefits to the insured, the insurer must pay the actual arbitration costs, including expert witness fees, incurred in establishing the insured's claim.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 16, 2007.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Binding arbitration is a fast, fair, and cost effective way to handle disputes on low value insurance claims. Personal injury protection (PIP) claim disputes tend to involve very small amounts of money, usually under \$1,000. Because PIP is a no-fault coverage, only the amount of the claim is at dispute. If payment for medical treatment is denied by a health insurance company, there is an appeals process, but if payment for medical treatment is denied under PIP there is no appeals process, generally. Unless the insurance policy provides for arbitration, the insured must file a lawsuit, which is expensive and time consuming. Even mandatory arbitration through the courts has a six-month wait. Even if an insured prevails at mandatory arbitration, the insurer is still entitled to a trial de novo, which is very expensive for the insured. PIP is analogous to mandatory uninsured motorist (UIM) coverage and courts have ruled that insurers must pay expenses associated disputes about UIM coverage, so insurers should have to pay PIP arbitrator fees as well. Otherwise an insured would effectively receive less PIP coverage than is required under law. This bill will reduce the number of disputes regarding PIP and will deter insurance companies from unreasonably cutting off PIP benefits. The system is currently broken as insurers often cut off PIP benefits to injured insureds and the insureds cannot challenge them because lawsuits are so expensive and time-consuming. Insurance companies will not have to bear additional costs of binding arbitration, they can just pass whatever increase in expense on to their policyholders; the increase will be unsubstantial because arbitration is so inexpensive.

**CON:** Under our PIP policies there is already voluntary arbitration and that arbitration is paid for by the insurance company. Binding arbitration is very different from voluntary arbitration; there is no way to challenge binding arbitration, the participants give up their right to a trial. However, under voluntary arbitration, if either party is unhappy with the decision they are still entitled to a trial de novo on the dispute. This bill extinguishes that right to a trial de novo and parties should have that right. Binding arbitration will add additional costs and will be frustrating to consumers because it is such a confusing process. Claims will not get settled any faster under binding arbitration.

**Persons Testifying:** PRO: Steven Toole, Larry Shannon, Washington State Trial Lawyers Association.

CON: Janet Paulson, Jean Leonard, PEMCO Insurance, Washington Insurers; Mel Sorensen, Property Casualty Insurers, Washington Defense Trial Lawyers.